

IN THE SHOSHONE AND ARAPAHO TRIBAL COURT
SHOSHONE AND ARAPAHO TRIBES
WIND RIVER INDIAN RESERVATION
FT. WASHAKIE, WYOMING

IN THE MATTER OF THE ADOPTION)
OF RULES OF CRIMINAL AND CIVIL)
PROCEDURE RELATING TO TIME LIMITS)
FOR CONCLUDING CERTAIN PROCEEDINGS)

This court having requested the Wind River Bar Association to advise the court on adoption of certain rules of court relating to time limits for certain criminal and civil matters, and the members of the bar having conferred, conducted research, and thereafter having presented to this court suggested rules entitled "Speedy Trial in Criminal Prosecutions," and "Dismissals for Lack of Prosecution," and having recommended that the court approve and adopt the same, and it appearing that such rules, with certain modifications, should be adopted;

IT IS HEREBY ORDERED that, pursuant to the authority designated in Rule 37(1), Shoshone and Arapaho Rules of Criminal Procedure (S&A-R-CR-P), and in order to supplement Rules 3(6), 30(2), and 32, S&A-R-CR-P and to harmonize and carry out the intent of those rules, the following Rule of Court be, and the same is hereby, adopted to govern all criminal proceedings in the Shoshone and Arapaho Tribal Court (S&ATC):

RULE OF COURT NO. CR-101
SPEEDY TRIAL IN CRIMINAL PROSECUTIONS

a. Time Limits

1. Complaint.

(a) The complaint charging an individual with the commission of an offense shall be filed within thirty (30) days from the date on which such individual was arrested in connection with such charges.

(b) If the complaint is not filed within the time limits required by this subsection, the charges against the individual contained in such complaint shall be dismissed by the court on its own motion.

2. Trial.

(a) In any case in which a plea of not guilty is entered, the trial of a defendant charged in the complaint with the commission of an offence shall commence within ninety (90) days of the filing of the complaint, or from the date the defendant has appeared before a judicial officer of the court in which the charge is pending, whichever date last occurs.

(b) Unless the defendant consents in writing to the contrary, the trial shall not commence less than thirty (30) days from the date on which the defendant first appears through counsel or expressly waives counsel and elects to proceed pro se.

(c) If trial is not commenced within the time limits required by this subsection, the charges against the individual contained in the complaint shall be dismissed by the court on motion of the defendant. Failure of the defendant to move for dismissal prior to trial or entry of a plea of guilty or nolo contendere shall constitute a waiver of the right to dismissal under this subsection.

3. Refiling; reinstatement; reprosecution

The provisions of this rule shall also apply to:

(a) trials upon complaints dismissed by the trial court and refiled by the prosecutor,

(b) complaints dismissed by the trial court and reinstated following an appeal, from the date the action occasioning the trial becomes final, and

(c) retrials following declaration of mistrial by the trial judge or following an order of such judge for a new trial, from the date the action occasioning the retrial becomes final.

Periods of delay enumerated in section b. shall be excluded in computing the time limitations specified in this subsection a.3.; provided, however, that the prosecutor may apply to the court, before the applicable deadline has passed, for an extension of the time limits specified in this subsection if the requested extension is consistent with the provisions of this rule.

b. Periods of Delay Excluded

The following periods of delay shall be excluded in computing the time within which a complaint must be filed or the trial of any such offense must commence:

1. Any period of delay resulting from other proceedings concerning the defendant, including without limitation, delay resulting from --

(a) any proceeding, including any examinations, to determine mental competency or physical capacity of the defendant, or from the fact that the defendant is mentally incompetent or physically unable to stand trial;

(b) trial with respect to other charges against the defendant;

(c) any interlocutory appeal;

(d) any pretrial motion, from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, such motion;

(e) consideration by the court of a proposed plea agreement to be entered into by the defendant and the prosecutor;

(f) deferral of prosecution pursuant to written agreement between the prosecutor and the defendant, with the approval of the court, for the purpose of allowing the defendant to demonstrate his good conduct; or

(g) absence or unavailability of the defendant or an essential witness; provided, that a defendant or essential witness shall be considered absent or unavailable when --

(A) his whereabouts are unknown and he is attempting to avoid apprehension or prosecution;

(B) his whereabouts cannot be determined by due diligence;

(C) his whereabouts are known, but his presence for trial cannot be obtained by due diligence or he resists appearing at or being returned for trial.

2. Any period of delay resulting from a continuance

granted by any judge, but only if such continuance is granted on the basis of the judge's written findings that the ends of justice served by taking such action outweigh the best interest of the defendant and the public in a speedy trial; provided, however, that no continuance shall be granted because of general congestion of the court's calendar, or lack of diligent preparation or failure to obtain available witnesses on the part of the prosecutor.

c. Dismissals With or Without Prejudice; Burden of Proof

1. In determining whether to dismiss the case with or without prejudice, the court shall consider, among others, each of the following factors:

(a) the seriousness of the offense;

(b) the facts and circumstances of the case which led to dismissal;

(c) the impact of reprosecution on the administration of justice.

(d) knowingly false statements made in connection with a motion for continuance;

(e) willful failure to proceed to trial without justification consistent with this rule;

(f) knowingly allowing the case to be set for trial without disclosing the fact that a necessary witness would be unavailable for trial; and

(g) filing of a motion solely for purposes of delay which the movant knows is totally frivolous and without merit.

2. The defendant shall have the burden of proof of supporting a motion for dismissal under subsection a.2. of this rule, but the prosecutor shall have the burden of going forward with the evidence in connection with any exclusion of time under section b.

d. Rights Under 25 U.S.C. 1302 (Indian Civil Rights Act)

No provision of this rule shall be interpreted as a bar to any claim of denial of speedy trial as required by Section 1302(6) of Title 25, United States Code.

e. Effective Date

The provisions of this rule shall apply to all proceedings

pending or commenced on or after the date of the order adopting this rule; provided, that:

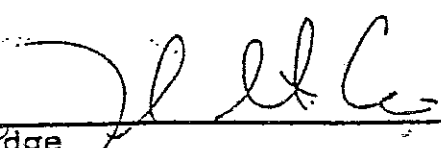
1. As to arrests which predate the adoption of this rule, thirty (30) days shall be added to the time limits specified in section a., and

2. As to complaints filed before the adoption of this rule, sixty (60) days shall be added to the time limits specified in section a.

IT IS FURTHER ORDERED that, to clarify and carry out the intent of Rule 15(2)(a) of the Shoshone and Arapaho Rules of Civil Procedure (SARCP), the following rule be, and the same is hereby, adopted as a Rule of Court to govern all civil proceedings before the Shoshone and Arapaho Tribal Court:

IT IS FURTHER ORDERED that the Court Administrator shall make this order and these rules available for public inspection and copying at no charge.

DONE AT FORT WASHAKIE, WIND RIVER INDIAN RESERVATION, WYOMING, this 28 day of April, 1993.



Chief Judge
Shoshone and Arapaho Tribal Court

Shoshone and Arapahoe Tribal Court

P.O. Box 608
Fort Washakie, Wyoming 82514-0608

May 12, 1994

NOTICE TO ATTORNEYS AND ADVOCATES FOR THE DEFENSE IN CRIMINAL CASES

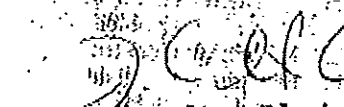
Since the Shoshone and Arapahoe Tribal Court has adopted the 90 day "speedy trial" rule, it has become obvious that there must also be changes in procedure in those cases where continuances are requested by the defense, either by granting far fewer continuances or requiring a waiver of the "speedy trial" rule.

Notice is hereby given to attorneys and advocates for defendants that we now require the initial request for continuance filed by the defense to be titled "MOTION FOR CONTINUANCE AND WAIVER OF RIGHT TO A SPEEDY TRIAL", said motion to include the following sentence:

I understand that by making this request I also hereby waive my right to a speedy trial as cited under Rules 3(6), 30(2) and 32(3) of the Shoshone and Arapahoe Law and Order Code.

Continuances granted on the motion of the prosecution or the court will not affect the limit of 90 days from the defendant's arraignment in which time the case must be resolved.

Sincerely,



John St. Clair

Chief Judge

SHOSHONE AND ARAPAHOE TRIBAL COURT

WIND RIVER INDIAN RESERVATION
Fort Washakie, Wyoming

**IN THE MATTER OF
TRIALS IN JUVENILE
CASES**

Civil No. _____

ORDER OF COURT

The Shoshone and Arapahoe Tribal Court hereby finds that Title III, Chapter 5, Section 11, Shoshone and Arapahoe Law and Order Code (3-5-11, S&A LOC) is too restrictive in that it is very difficult to conduct a trial within 30 days of the complaint.

THEREFORE IT IS ORDERED, ADJUDGED AND DECREED that CR Rule 101 apply to the Children's Court in lieu of Section 3-5-11.

(Seal of Tribal Court)



Judge of Shoshone and Arapahoe Tribal Court

Dated in Court this 23rd day of

October

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